

**DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME	BAYS OF KONA
Project Address	73-4272 Hulikoa Drive Kailua-Kona, Hawaii 96740
Registration Number	6339
Effective Date of Report	<b>August 27, 2007</b>
Developer(s)	Bays of Kona LLC

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

## **SPECIAL ATTENTION**

The developer discloses the following:

No warranties are given to the Buyer as to the construction, materials or workmanship of the Project.

This public report does not constitute approval of the Project by the Real Estate Commission or any other governmental agencies.

**THE PROSPECTIVE PURCHASERS ARE CAUTIONED TO CAREFULLY REVIEW ALL DOCUMENTS REGARDING THIS CONDOMINIUM PROJECT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.**

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## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. In addition, certain requirements and approvals of the county in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

If you are a typical condominium unit owner, you will have two kinds of ownership: (1) ownership in your individual unit; and (2) a percentage interest in the common elements.

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first that the Developer will effectively control the affairs of the Association. It is frequently necessary for the Developer to do so during the early stages of development and the Developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

**1. THE CONDOMINIUM PROJECT**

**1.1 The Underlying Land**

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple	<input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	Not Applicable	
Address of Project	73-4272 Hulikoa Drive Kailua-Kona, Hawaii 96740	
Address of Project is expected to change because	Not Applicable	
Tax Map Key (TMK)	(3) 7-3-058-047	
Tax Map Key is expected to change because	Not Applicable.	
Land Area	1.01 acres	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	Not Applicable	

**1.2 Buildings and Other Improvements**

Number of Buildings	1
Floors Per Building	1
Number of New Building(s)	0
Number of Converted Building(s)	1
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Concrete, steel and related building materials.

**1.3 Unit Types and Sizes of Units**

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Total Area
1	7	½ bath*	2,400	Not Applicable	Not Applicable	2,400
See Exhibit A						

\* A "rough-in" for plumbing for a water closet/lavatory is provided. The watercloset/lavatory must be completed by each unit owner.

7	<b>Total Number of Units</b>
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Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stalls in the Project	23, including 1 handicap stall
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	4 to Unit 1; 3 to Units 2-7
Attach Exhibit <u> B </u> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights. Developer reserves the right to amend the Declaration, without the approval, consent or joinder of any other person, to change the designation of parking stalls which are appurtenant to units owned by the Developer. The amendment need only be signed by the Developer and shall be effective upon recordation in the Bureau of Conveyances.	

**1.5 Boundaries of the Units**

Boundaries of the Unit: Each Unit shall be deemed to include (i) the walls and partitions which are not load-bearing and which are within the perimeter walls, and (ii) doors and door frames, windows and window frames, the inner decorated or finished surfaces of the walls, floors, and ceilings surrounding the Unit, and the air space within the perimeters of the Unit.

**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project): Each Owner shall have the right at the Unit Owner's sole option at any time and from time to time, as set forth in the Declaration, with the reasonable consent and/or approval of the Association, to improve, renovate, remodel, make additions to, remove, replace, alter or restore the interior improvements to or in the Owner's Unit or portions thereof or upon the Limited Common Elements appurtenant to the Owner's Unit (collectively, the foregoing are referred to as "alterations".) See Sections E and F of the Declaration for additional requirements and restrictions.

**1.7 Common Interest**

Common Interest: Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:

Described in Exhibit B

**1.8 Recreational and Other Common Facilities (Check if applicable): None**

	Swimming pool
	Laundry Area
	Storage Area
	Tennis Court
	Recreation Area
	Trash Chute/Enclosure(s)
	Exercise Room
	Security Gate
	Playground
	Other (describe):

**1.9 Common Elements**

**Common Elements:** Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.

Described in Exhibit B.

Describe as follows:

Common Element	Number
Elevators	0
Stairways	0
Trash Chutes	0

**1.10 Limited Common Elements**

**Limited Common Elements:** A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project

Described in Exhibit B

Described as follows:

**1.11 Special Use Restrictions**

The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below

X	Pets: No pets are allowed
	Number of Occupants:
X	Other: Only non-residential uses allowed by Hawaii County Code and State Land Use laws
	There are no special use restrictions

**1.12 Encumbrances Against Title**

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).

Exhibit C describes the encumbrances against title contained in the title report described below.

Date of the title report: May 15, 2007

Company that issued the title report: Fidelity National Title Insurance Company

**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning						
	Type of Use	No. of Units	Use Permitted by Zoning		Zoning	
<input type="checkbox"/>	Residential		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Commercial		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Mix Residential/Commercial		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Hotel		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Timeshare		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Ohana		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Industrial	7	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Agricultural		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Recreational		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input type="checkbox"/>	Other(specify)		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Variances to zoning code have been granted.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Describe any variances that have been granted to zoning code.			None			

**1.14 Other Zoning Compliance Matters**

Conforming/Non-conforming Uses, Structures and Lots			
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>			
	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:</p>			

**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more</b></p>	<p><input type="checkbox"/> Applicable</p> <p><input checked="" type="checkbox"/> Not Applicable</p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p>	
<p>Estimated cost of curing any violations described above:</p>	

<p><b>Verified Statement from a County Official</b></p>
<p>Regarding any converted structures in the project, attached as Exhibit <u>  D  </u> is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p>or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>
<p>Other disclosures and information:</p>

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws?      ___ Yes ___ No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws?      ___ Yes ___ No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.</p>	
<p>The nature and the scope of services to be provided.</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.</p>	
<p>The duration of the provision of the services.</p>	
<p>Other possible impacts on the project resulting from the provision of the services.</p>	
<p>Other disclosures and information.</p>	

**2. PERSONS CONNECTED WITH THE PROJECT**

<p><b>2.1 Developer</b></p>	<p>Name: Bays of Kona LLC</p> <p>Business Address: 71-1714 Puulani Drive, #16 Kailua-Kona, Hawaii 96740</p> <p>Business Phone Number: (808) 325-1090</p> <p>E-mail Address:</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) attached separate sheet if necessary).</p>	<p>Bobby Nakamura - Member</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Island Land Company Inc.</p> <p>Business Address: 75-5705 Kuakini Highway, Suite 4 Kailua-Kona, Hawaii 96740</p> <p>Business Phone Number: (808) 329-7170</p> <p>E-mail Address:</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: First Hawaii Title Corporation</p> <p>Business Address: 65-1291 Kawaihae Road, Suite 104 Kamuela, Hawaii 96743</p> <p>Business Phone Number: (808) 885-4822</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: Industrial Contracting, Ltd.</p> <p>Business Address: 73-4880 Anini Street Kailua-Kona, Hawaii 96740</p> <p>Business Phone Number: (808) 331-0566</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Project will be self-managed by the Association</p> <p>Business Address:</p> <p>Business Phone Number:</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Robert D. Triantos/Carlsmith Ball LLP</p> <p>Business Address: 75-1000 Henry Street, Suite 209 Kailua-Kona, Hawaii 96740</p> <p>Business Phone Number: (808) 329-6464</p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	March 2, 2007	2007-053470

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters that affect how the condominium project will be governed.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	March 2, 2007	2007-053471

Amendments to Bylaws of the Association of Unit Owners		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4418
Dates of Recordation of Amendments to the Condominium Map:	

### 3.4 House Rules

The Board of Directors may adopt rules and regulations (commonly called "House Rules") to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the Developer. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:	
Are Proposed	<input type="checkbox"/>
Have been Adopted and Date of Adoption	<input type="checkbox"/>
Developer does not plan to adopt House Rules	<input checked="" type="checkbox"/>

### 3.4 Changes to the Condominium Documents

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	67%
Bylaws	67%	67%

### 3.5 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	<p>Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and Project Rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:</p> <p>Developer may amend the Declaration, Bylaws and/or Condominium Map (a) at any time prior to the filing of the first unit conveyance to a party not a signatory to the Declaration; (b) to file the "as built" verification statement (with plans, if applicable) required by the Condominium Property Act; (c) to make any amendments required by law, by the Real Estate Commission of the State of Hawaii, by a title insurer issuing title insurance on the Project or any of the units, by any purchaser, insurer or guarantor of loans to enable it to purchase, insure or guarantee a loan made on the security of the Project or any of the units, or by any governmental agency; (d) to reflect alterations of the Project which the Developer is permitted to make pursuant to the Declaration; and (e) to change the designation of parking stalls which are appurtenant to units owned by the Developer</p>

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

<p><b>Management of the Common Elements:</b> The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.</p>	
<p>The Initial Condominium Managing Agent for this project is (check one):</p>	
	Not affiliated with the Developer
X	None (self-managed by the Association)
	The Developer or an affiliate of the Developer
	Other (explain)

### 4.2 Estimate of the Initial Maintenance Fees

<p><b>Estimate of the Initial Maintenance Fees:</b> The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.</p>
<p>Exhibit <u>E</u> contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.</p>

### 4.3 Utility Charges to be Included in the Maintenance Fee

<p>If checked, the following utilities are included in the maintenance fee:</p>	
X	Electricity for the common elements
	Gas for the common elements
X	Water
X	Sewer
	TV cable
	Other (specify)

### 4.4 Utilities to be Separately Billed to Unit Owner

<p>If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:</p>	
X	Electricity for the Unit only
X	Gas for the Unit only
	Water
	Sewer
X	TV cable
X	Other (specify): Telephone

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit <u>  F  </u> contains a summary of the pertinent provisions of the sales contract.
<input checked="" type="checkbox"/>	Escrow Agreement dated: May 9, 2007 Name of Escrow Company: First Hawaii Title Corporation Exhibit <u>  G  </u> contains a summary of the pertinent provisions of the escrow agreement.
	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants. Not Applicable

	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit <u>        </u> .
	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input checked="" type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

<u>Type of Lien</u>	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage	If Developer defaults, the purchaser may exercise the purchaser's rights under the sales contract against the Developer. The purchaser's contract will be subject to cancellation and the purchaser may not be able to purchase the unit. All deposits made by the purchaser will be refunded, subject to an escrow cancellation fee.

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements: The contractor's limited warranty period has expired. Developer makes no express warranties. DEVELOPER DISCLAIMS ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY IMPLIED WARRANTY OF WORKMANSHIP AND ANY OTHER EXPRESS OR ANY IMPLIED WARRANTIES WITH RESPECT TO THE UNITS, THE COMMON ELEMENTS OR THE PROJECT.

Developer disclaims any and all responsibility or liability for any water infiltration, any malfunction, any construction or design defect, or any other problems which a Buyer may encounter with respect to the Unit or the Project.

Appliances: None

**5.5 Status of Construction, Date of Completion or Estimated Date of Completion**

Status of Construction: Construction of the Project was completed on May 22, 2005.
Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.
Completion Deadline for any unit not yet constructed, as set forth in the sales contract:
Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:

**5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance**

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

**5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance**

<input checked="" type="checkbox"/>	<p>The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project.</p> <p>If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.</p>
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**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):	
	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b></p> <hr/>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u></b> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project Costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</p>
<p><b>Box B</b></p> <hr/>	<p>The Developer has <b>not</b> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>
<p><b>Material House Bond.</b> If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.</p>	

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.

1.	<b>Developer's Public Report</b>
2.	<b>Declaration of Condominium Property Regime (and any amendments)</b>
3.	<b>Bylaws of the Association of Unit Owners (and any amendments)</b>
4.	<b>Condominium Map (and any amendments)</b>
5.	House Rules, if any
6.	Escrow Agreement
7.	Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted.
8.	Other:

Copies of the condominium and sales documents and amendments made by the Developer are available for review through the Developer or through the Developer's sales agent, if any. The Condominium Property Regime law (Chapter 514B, HRS) and the Administrative Rules (Chapter 107, HAR), are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

(1) The purchaser has signed the sales contract.

(2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration, Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.

(3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.

(4) The purchaser does at least one of the following:

(a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30th calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## **6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT**

### Kohanaiki Business Park Association

The Declaration of Covenants, Conditions and Restrictions of the Kohanaiki Business Park Association provides that all current and future owners, tenants and occupants of Units in the Project shall be bound by and subject to the provisions of that certain Declaration of Covenants, Conditions and Restrictions dated July 20, 1999, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 99-123820, as amended by instrument dated September 10, 1999, recorded in said Bureau as Document No. 99-150035, as amended from time to time ("Kohanaiki Declaration"). Each Unit Owner will be required to pay Kohanaiki Business Park Association dues, which, as of May 2007, were approximately \$375.00 per month per Unit.

Article V of the Kohanaiki Declaration sets forth various restrictions on the use of each lot in the Kohanaiki Business Park (the "Subdivision"), pertaining to, including but not limited to, the following: (1) parking on any Roadway Lot or public street within the Subdivision; (2) loading and unloading of supplies, materials, products or other items related to the use of any lot; (3) no unsightliness; (4) no hazardous activities; (5) no hazardous materials; (6) no dumping of waste, refuse or any other material; (7) control of emissions; (8) noise; (9) lighting and lighting fixtures; (10) signs; and (11) mining and drilling.

### Hazardous Materials

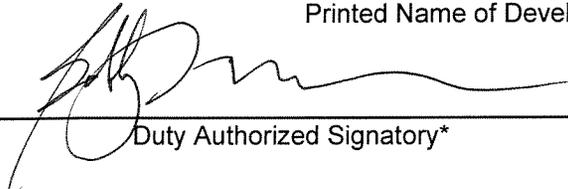
The Developer neither prepared nor commissioned a Phase 1 Environmental Site Assessment and makes no representations or warranties whatsoever. The Developer has made no independent investigation as to asbestos or other hazardous substances in the Units or in, under or around the Project, including but not limited to radioactive materials, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under, or for the purposes of, hazardous materials laws. Because of the possible presence of such substances, the Buyer should have the Unit inspected to determine the extent (if any) of such contamination and any necessary remedial action. The Developer will not correct any defects in the Units or in the Project or anything installed or contained therein and the Buyer expressly releases the Developer from any liability to the Buyer if any hazardous materials are discovered.

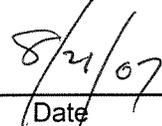
The Developer declares subject to the penalties set forth in Section 514B-69 that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13).

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Sections 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

The Developer hereby certifies that all the information contained in this report and the exhibits attached to this report and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

Bays of Kona LLC  
Printed Name of Developer

By:  \_\_\_\_\_  
Duty Authorized Signatory\*

  
\_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Date

Bobby Nakamura, Member of Bays of Kona LLC  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii  
Planning Department, County of Hawaii

**\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

## **BAYS OF KONA**

### **EXHIBIT "A"**

#### **DESCRIPTION OF BUILDING AND UNITS**

1. **Description of the Building:** The building is a commercial warehouse consisting of seven (7) units described below.

2. **Description of the Units:**

a. **Unit Numbers and Locations:** Each of the seven (7) Units shown on the Condominium Map and described below, together with the perimeter walls and any doors, windows, floors, roofs, concrete footings or other improvements now existing or hereafter constructed on or within the Units, are hereby designated as the Units of the Project. If the descriptions and divisions set forth in the Declaration conflict with the depictions and divisions shown on the Condominium Map, the latter shall control. The Condominium Map is intended only to show the layout, location, Unit numbers, dimensions and elevations of the building and Units and is not intended and shall not be deemed to contain or make any other representation or warranty.

b. **Layout and Area:** Units 1 through 7 each consist of a commercial warehouse space, with a "rough-in" for plumbing for a water closet/lavatory (which must be completed by each unit owner), with a net floor area of 2,400 square feet. The foregoing approximate total square footage of the enclosed portions of the Units is computed from and to the interior surfaces of the Unit perimeter walls.

**END OF EXHIBIT "A"**

## BAYS OF KONA

### EXHIBIT "B"

#### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

1. **Common Elements:** One freehold estate is designated in all remaining portions of the Project, called the "Common Elements", including specifically, but not limited to:

- a. The Land in fee simple.
- b. All grounds and landscaping, if any, and all parking stalls and loading bays, whether within or appurtenant to the Project.
- c. All ducts, sewer lines, cesspools, electrical equipment, wiring, pipes and other appurtenant transmission facilities over, under and across the Project which are outside of the Unit and which serve more than one Unit for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.
- d. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- e. Any area labeled common area on the Condominium Map.

2. **Limited Common Elements:** Certain parts of the Common Elements, herein called the "Limited Common Elements", are designated, set aside and reserved for the exclusive use of certain Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth hereinbelow and in the Declaration. The costs and expenses of every description pertaining to the Limited Common Elements, including but not limited to the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements, shall be charged to the Owner of the Unit to which the Limited Common Element is appurtenant, and if there is more than one Unit to which the Limited Common Element is appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Units except as otherwise provided in the Declaration. All Common Elements of the Project which are rationally related to less than all of the Units shall be Limited Common Elements appurtenant to the Unit(s) to which they are so related.

Limited Common Element Assignments and Common Interests are as follows:

Unit No.	Parking Stall Nos.*	Common Interest
1	1, 21, 22 & 23	14.2857%
2	2, 19 & 20	14.2857%
3	3, 17 & 18	14.2857%
4	4, 15 & 16	14.2857%
5	5, 13 & 14	14.2857%
6	6, 11 & 12	14.2857%
7	7, 9 & 10	14.2858%
		100.00%

The foregoing percentages of Common Interests were calculated to provide each Unit Owner with a roughly equal percentage of Common Interests in the Project.

\* Parking Stall No. 8 is designated for handicapped parking and is unassigned.

**END OF EXHIBIT "B"**

# BAYS OF KONA

## EXHIBIT "C"

### ENCUMBRANCES AGAINST THE TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Declaration of Conditions

Dated: May 27, 1992  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document  
No. 92-084328

3. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Declaration of Covenants, Conditions and Restrictions

Dated: July 20, 1999  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document  
No. 99-123820

The foregoing Declaration was amended by the following:

Recorded: in the Bureau of Conveyances of the State of Hawaii, Document  
No. 99-150035, dated September 10, 1999

4. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Bylaws of Kohanaiki Business Park Association

Dated: July 20, 1999  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document  
No. 99-123821

5. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Deed

Dated: December 14, 1999  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document  
No. 99-198606

6. As to Lot 26 (Roadway):
  - A. Rights of other who may own undivided interest(s), or have easement or access rights.
  - B. A non-exclusive easement for access and utility purposes in favor of Lots 1, 2, 13 and 14 of the "Kohanaiki Business Park, Phase II" subdivision as more particularly described and provided for in that certain Deed dated December 26, 2002 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-234164.
7. Any unrecorded or unfiled leases, subleases or rental agreements and any liens, charges or exceptions against any lessees, sublessees or tenants named therein.
8. A mortgage to secure an indebtedness as shown below, and any other obligations secured thereby:

Amount: \$1,425,000.00  
 Dated: July 15, 2005  
 Loan No.: None Shown  
 Mortgagor: Bobby S. Nakamura and Barbara J. Nakamura, husband and wife  
 Mortgagee: First Hawaiian Bank, a Hawaii corporation  
 Recorded: July 29, 2005, in the Bureau of Conveyances of the State of Hawaii, Document No. 2005-151101

Assumption of and Amendment of Real Property Mortgage and Assumption of Assignment of Lessor's Interest in Leases

Dated: April 12, 2006  
 Recorded: April 21, 2006, in the Bureau of Conveyances of the State of Hawaii, Document No. 2006-074545

9. Absolute Assignment of Rentals and Lessor's Interest in Leases, to secure payment of an indebtedness, shown below and upon the terms and conditions therein

Amount: \$1,425,000.00  
 Assigned to: First Hawaiian Bank, a Hawaii corporation  
 By: Bobby S. Nakamura and Barbara J. Nakamura, husband and wife  
 Recorded: July 20, 2005, in the Bureau of Conveyances of the State of Hawaii, Document No. 2005-151102

Assumption of and Amendment of Real Property Mortgage and Assumption of Assignment of Lessor's Interest in Leases

Dated: April 12, 2006  
Recorded: April 21, 2006, in the Bureau of Conveyances of the State of Hawaii, Document No. 2006-074545

10. A financing statement recorded in the Bureau of Conveyances, showing

Debtor: Bays of Kona LLC  
Secured Party: First Hawaiian Bank, a Hawaii corporation  
Dated: None Shown  
Recorded: April 21, 2006, in the Bureau of Conveyances of the State of Hawaii, Document No. 2006-074546

11. Condominium Map No. 4418, recorded in the Bureau of Conveyances of the State of Hawaii

12. Covenants, conditions, and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in the following:

Declaration of Condominium Property Regime of Bays of Kona

Dated: March 2, 2007  
Recorded: March 23 2007, in the Bureau of Conveyances of the State of Hawaii, Document No. 2007-053470

13. By-Laws of the Association of Apartment Owners of Bays of Kona, dated March 2, 2007, recorded March 23, 2007, in the Bureau of Conveyances of the State of Hawaii, Document No. 2007-053471

14. Upon conveyance of any Apartment Unit(s), said Apartment shall become subject to the following:

- A. Terms, provisions and conditions as contained in the Original Apartment Deed and the effect of any failure to comply with such terms, provisions and conditions.
- B. Any and all easements encumbering the apartment herein mentioned, and/or the common interest apartment thereto, as created by or mentioned in said Declaration, as said Declaration may be amended from time to time in accordance with the law and/or in the Apartment Deed, and/or as delineated on said Condominium Map.

15. The following qualifying language applies to any and all covenants, conditions and restrictions (CC&R's) set forth in the items above:

But omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin,

ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

16. A financing statement recorded in the Bureau of Conveyances, showing

Debtor: Bays of Kona, LLC  
Secured Party: First Hawaiian Bank, a Hawaii corporation  
Date: None Shown  
Recorded: March 29, 2007, in the Bureau of Conveyances of the State of Hawaii, Document No. 2007-056695

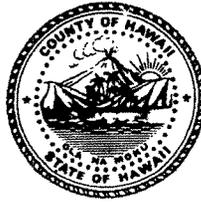
17. A Second Mortgage to secure an indebtedness as shown below, and any other obligations secured thereby

Amount: \$100,000.00  
Dated: March 23, 2007  
Loan No.: None Shown  
Mortgagor: Bays of Kona LLC, a Hawaii limited liability company  
Mortgagee: First Hawaiian Bank, a Hawaii corporation  
Recorded: March 29, 2007, in the Bureau of Conveyances of the State of Hawaii, Document No. 2007-056694

18. For information regarding real property taxes as may be due and owing, reference is made to the Director of Finance, County of Hawaii.

**END OF EXHIBIT "C"**

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA, LEED™ AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

February 1, 2007

Jerilynn Ono Hall  
Carlsmith Ball LLP  
75-1000 Henry Street, Suite 209  
Kailua-Kona, HI 96745-1720

Dear Ms. Hall:

RE: Bays of Kona Condominium Project  
73-4270 Hulikoa Drive, Kailua-Kona, HI 96740  
TMK: (3) 7-3-058:047

---

Per your letter dated December 11, 2007, you have requested the following information for the warehouse/storage facility located on the above-referenced property.

- 1) Whether the dwellings are in compliance with all zoning and building ordinances and codes;

The Planning Department determines compliance with the zoning code at time of building permit application. The Planning Department approved Building Permit No. B2005-0078K for a warehouse/storage facility that was issued by the Building Division on January 14, 2005. In addition, a Plan Approval was issued to Mr. Jack Pierson on September 16, 2004 for the 16,800 sq. ft. warehouse.

The Department of Public Works, Building Division determines compliance with building code and ordinances. If the warehouse/storage facility was built according to the approved building plans, then the structures would have been deemed to be in compliance at the time it received final inspection from the Building Division. Building Permit No. B2005-0078K was closed and recorded as final on June 28, 2005.

- 2) Whether any variance has been granted from any ordinances and codes to achieve such compliance;

No variances have been issued for the subject parcel. Variances were not required to achieve compliance with the zoning code at the time of application.

Hawai'i County is an equal opportunity provider and employer

# EXHIBIT D

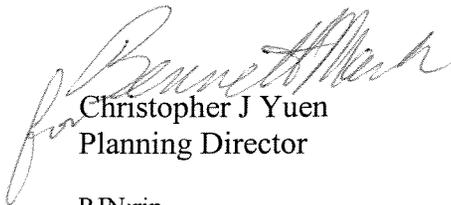
Ms. Ono Hall  
February 1, 2007  
Page 2

- 3) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinance or codes;

Our records do not include any reference to non-conforming uses or structures on the subject parcel.

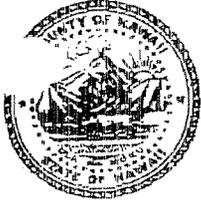
Please feel free to contact Rosalind Newlon at 808-327-3510 if you need additional information.

Sincerely,



Christopher J Yuen  
Planning Director

RJN:rjn  
K:\Staff\Newlon\Letters\COR 07-024265.doc  
c w/ltr: West Hawaii Office



# BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720  
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 327-3520 • Fax (808) 327-3509

January 2, 2007

Jerilynn Ono Hall  
Carlsmith Ball LLP  
75-1000 Henry St. Ste. 209  
P.O.Box 1720  
Kailua Kona, HI. 96745

SUBJECT: Bays of Kona Condominium Project  
73-4270 Hulikoa Drive, Kailua Kona, HI. 96740

TMK: 7-3-058-047

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No \_\_\_\_\_ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
  - Building     Electrical     Plumbing     Sign
- Others: See Attachments

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Chris Domino at phone no. 327-3520

BRIAN Y. KAJIKAWA, Building Chief

Hawai'i County is an Equal Opportunity Provider and Employer

**BAYS OF KONA**

**EXHIBIT "E"**

**BREAKDOWN OF ANNUAL MAINTENANCE FEES**

**AND**

**MONTHLY ESTIMATED COST FOR EACH UNIT**

The following estimates are subject to change based on actual costs of the items listed, and the Developer cannot provide any assurances regarding the estimated maintenance expenses. The breakdown of the estimated cost for each unit does not include the buyer's obligation to pay the Kohanaiki Business Park Association dues or real property taxes.

Estimated Annual Maintenance Fees:

	<u>Monthly Fee</u> x 12 months =	<u>Yearly Total</u>
Utilities and Services		
Air Conditioning		
Electricity		
[ ] common elements only		
[X] common elements and units	\$100.00	\$1,200.00
Elevator		
Gas (no gas)		
[ ] common elements only		
[ ] common elements and units	\$ -0-	\$ -0-
Refuse Collection	\$414.00	\$4,968.00
Telephone		
Water and Sewer	\$ 90.00	\$1,080.00
Maintenance, Repairs and Supplies		
Building	\$100.00	\$1,200.00
Grounds	\$265.00	\$3,180.00
Management		
Management Fee	\$850.00	\$10,200.00

Payroll and payroll Taxes

Office Expenses	\$ 50.00	\$600.00
Insurance	\$ 423.65	\$5,803.80
Reserves(*)	\$100.00	\$1,200.00
Taxes and Government Assessments		\$10,040.00
Audit Fees	\$100.00	\$1,200.00
Other	\$106.68	\$1,280.20
Legal Fees	\$100.00	\$1,200.00
Dues & Subscriptions	\$100.00	\$1,200.00
Security Service		
TOTAL		\$44,352.00

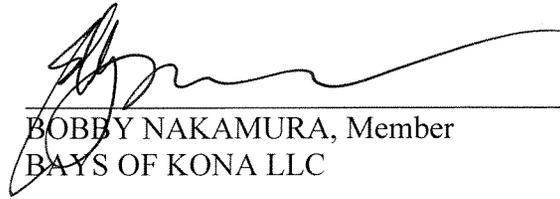
Monthly Estimated Cost for Each Unit:

<u>Unit</u>	<u>Monthly Fee x 12 months - Yearly Total</u>	
1	\$528.00	\$6,336.00
2	\$528.00	\$6,336.00
3	\$528.00	\$6,336.00
4	\$528.00	\$6,336.00
5	\$528.00	\$6,336.00
6	\$528.00	\$6,336.00
7	\$528.00	<u>\$6,336.00</u>
TOTAL		\$44,352.00

***The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.***

I, **Bobby Nakamura**, as the member of BAYS OF KONA LLC, the Developer for the BAYS OF KONA condominium project, hereby certify that the above breakdown of the annual maintenance fees and the monthly estimated cost for each unit are based on generally accepted accounting principles.

DATED: Kailua-Kona, Hawaii, May 9, 2007.

  
\_\_\_\_\_  
BOBBY NAKAMURA, Member  
BAYS OF KONA LLC

Subscribed and sworn to before me  
this 9<sup>th</sup> day of May, 2007.

L.S.

Willetta T. Archer  
Name: Willetta T. Archer  
Notary Public, State of Hawaii

My commission expires: 5-19-07

(\*) Developer discloses that no reserve study has been conducted in accordance with § 514B-148, HRS, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. Pursuant to § 514B-148, HRS, a new association created after January 1, 1993 need not collect estimated replacement reserves until the fiscal year which begins the association's annual meeting.

The Developer will assume all the actual common expenses of the Project, and a Unit Owner will not be obligated for the payment of the Owner's share of the common expenses until such time as the Developer sends the Owners written notice that, after a specified date, the Owners shall be obligated to pay for the portion of common expenses that is allocated to their respective Units. The Developer shall mail the written notice to the Owners, the Association, and the Managing Agent, if any, at least thirty (30) days before the specified date. The Developer shall have no obligation to pay for any cash reserves or any other reserve amounts with respect to or attributable to the period during which the Developer assumes the actual common expenses of the Project.

**END OF EXHIBIT "E"**

# **BAYS OF KONA**

## **EXHIBIT "F"**

### **SUMMARY OF SALES CONTRACT**

The sales contract that will be used will state, in addition to the price, description and location of the unit, and other terms and conditions under which a buyer will agree to purchase a unit in the Project, the following:

(a) What a buyer must do to qualify for a loan if the buyer wants a mortgage loan to cover part of the purchase price.

(b) That a buyer's money will be held in escrow, under the terms of the escrow agreement.

(c) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(d) That in the event a buyer fails to perform the buyer's obligations under the sales contract (seller not being in default), seller may (1) bring an action for damages for breach of contract, (2) retain the initial deposit and all additional deposits provided for herein as liquidated damages, and (3) buyer shall be responsible for any costs incurred in accordance with the sales contract.

(e) That in the event seller fails to perform seller's obligations under the sales contract (buyer not being in default), buyer may (1) bring an action for damages for breach of contract, (2) seek specific performance of the sales contract, and (3) seller shall be responsible for any costs incurred in accordance with the sales contract.

The sales contract will contain various other provisions which the buyer should become acquainted with.

**It is incumbent upon a prospective buyer to read the full text of the Sales Contract.**

**END OF EXHIBIT "F"**

## **BAYS OF KONA**

### **EXHIBIT "G"**

#### **SUMMARY OF CONDOMINIUM ESCROW AGREEMENT**

A copy of the executed Condominium Escrow Agreement dated May 9, 2007 between First Hawaii Title Corporation., as Escrow Agent, and Developer, has been submitted to the Real Estate Commission. The Escrow Agreement provides for the deposit of buyer's funds pursuant to the Sales Contract and also provides for the retention or disbursement of the funds. The Escrow Agreement provides, in part, that any interest earned on money on deposit may be retained by the Developer unless the Sales Contract directs otherwise. In the event that the Sales Contract and Chapter 514B, Hawaii Revised Statutes, entitle a buyer to a refund of buyer's deposits held by the Escrow Agent, then Escrow Agent, upon instruction from Developer, will refund buyer's deposits, without interest earned and less certain cancellation fees and costs (e.g., escrow cancellation fees, loan processing fees, cost of credit reports, etc.) as provided in the Sales Contract and Chapter 514B, Hawaii Revised Statutes, as it may be amended from time to time.

By law the total amount of such cancellation fees shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00). Under the Escrow Agreement no disbursement of funds can be made to the Developer until the Sales Contract becomes effective under the provisions of Chapter 514B, Hawaii Revised Statutes.

**It is incumbent upon a prospective buyer to read the executed Escrow Agreement with care.**

**END OF EXHIBIT "G"**